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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,918	07/03/2003	John C. Bucher	381123.00083	4660
34802	7590	09/10/2004	EXAMINER	
HOLLAND & KNIGHT LLP ATTN: STEFAN V. STEIN/ IP DEPT. POST OFFICE BOX 1288 TAMPA, FL 33601-1288				TSO, LAURA K
		ART UNIT		PAPER NUMBER
		2875		

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/613,918	BUCHER ET AL.	
	Examiner laura tso	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-33 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1-22 and 29-33 is/are allowed.  
 6) Claim(s) 23-28 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 03 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Information Disclosure Statement***

The cited patent to St. Louis has not been considered on form 1449 because the wrong document number has been listed. Note the patent to St. Louis listed on the hereto attached form 892.

***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 134. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure should be carefully reviewed to ensure that any and all grammatical, idiomatic, and spelling or other minor errors are corrected.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23-26 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (4,510,556).

Johnson discloses a device simulating a flame comprising a first LED light source [14] which oscillates between an on and off state, and a second LED light source [16] which oscillates between an on and off state, wherein the oscillation of the first and second light sources are independent. A translucent candle shaped housing surrounds the lamps [figure 1]. The oscillation of the light sources is controlled by the charging and discharging of resistors [26, 28] and capacitors [30, 36]. Note if the circuit board is 1X1.5 inches [column 3, line 14] and is contained in the candle [10], the light sources [14, 16 and 18] must be positioned within ½ inch from of another [figure 1]

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson.

Johnson does not disclose the light sources are attached to the lid and the oscillation circuitry is contained in the lid that is adapted to be attached to the top of the base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the candle disclosed by Johnson as a base and a lid and locating the circuitry in the lid so that the circuitry may be easily accessible, viewed and altered. It has been held that rearranging parts of an invention involves only routine skill in the art.

***Allowable Subject Matter***

Claims 1-22 and 29-33 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Prior art fails to show or suggest a lighting device for simulating a candle flicker comprising three light sources arranged in a vertical stack so that the first is lower than the second and the second is lower than the third, power sources are associated with each of the light sources wherein the duty cycle of the first light source is greater than the duty cycle of the second light source and the duty cycle of the third light source is less than the duty cycle of the second light source and the duty cycle of one power signal is independent of the duty cycle of the others.

Prior art fails to show or suggest a lighting device for simulating a candle flicker comprising three light sources arranged in a vertical stack so that the first is lower than the second and the second is lower than the third, power sources are associated with each of the light sources wherein the duty cycle of the second source is less than the duty cycle of the first light source and the duty cycle of the third light source is less than the duty cycle of the second light source and the second and third power circuits have at least one resistor and capacitor and the frequency of the power signal is determined at least in part by the resistor and capacitor.

Prior art fails to show or suggest a method for simulating a candle flicker comprising arranging three light sources arranged in a vertical stack, generating and providing a relatively high duty cycle to the lowest light source in the stack, generating and providing an intermediate duty cycle to the middle light source in the stack, generating and providing a relatively low duty cycle to the highest light source in the stack wherein the duty cycle and frequency of the waveforms are independent of each other.

Prior art fails to show or suggest a lighting device for simulating a candle flicker comprising a first light source that is on, a second light source that oscillates between the on and off state, a third light source that is on, a second light source that oscillates between the on and off state, wherein the oscillation of the second light source is independent of that of the third.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note US Patents: 6,719,443; 6,066,924; 5,924,784; 5,600,209; 5,013,972.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to laura tso whose telephone number is 571-272-2385. The examiner can normally be reached on M and Tu noon-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, sandra o'shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
laura tso  
Primary Examiner  
Art Unit 2875